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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

JASLYNN ANDERSON,

Plaintiff and Appellant,

v.

COUNTY OF ALAMEDA,

Defendant and Respondent.

A132493

(Alameda County
Super. Ct. No. RG11554554)

Appellant Jaslynn Anderson appeals, in propria persona, from the dismissal of her action with prejudice after she failed to furnish security upon being declared a vexatious litigant. We affirm.

I. FACTS

Between December 4, 2009, and October 12, 2010, Anderson filed the following six unlimited jurisdiction lawsuits in Alameda County, in propria persona; all were dismissed:

1. *Anderson v. Stance* (request for orders to stop harassment) (Super. Ct., 2009, No. RG09487595): default judgment entered, appeal dismissed (No. A127921.).

2. *Anderson v. Jackson* (complaint for damages) (Super. Ct., 2010, No. RG10499581): dismissed without prejudice.

3. *Anderson v. Alameda County Social Services* (complaint for discrimination, amended twice) (Super. Ct., 2011, No. RG10507145): judgment of dismissal entered upon sustaining demurrers without leave to amend.

4. *Anderson v. Walgreens Co./Sedgwick Claims Management Services, Inc.* (complaint for personal injury) (Super. Ct., 2010, No. RG10511919): dismissed in entirety upon consideration of ex parte application and good cause appearing.

5. *Anderson v. Sedgwick CMS Management Services, Inc.* (complaint for breach of contract) (Super. Ct., 2010, No. RG10511975): dismissed in entirety with prejudice upon granting ex parte application for dismissal.

6. *Anderson v. Walgreen Co.* (complaint for personal injury) (Super. Ct., 2011, No. RG10541004): action dismissed upon sustaining demurrer without leave to amend.

Then on January 6, 2011, Anderson filed a seventh lawsuit against respondent County of Alameda (sued as “Alameda County Social Services” and “Board of Supervisors”). The complaint lists causes of action for “Fraud, Civil Rights [and] Infliction of emotional distress.” Therein Anderson alleged that defendants said she was “in the department of behavioral science[s],” and she told the “represen[ta]tive and her supervisor” that she was never in such a program. Anderson complained of fraud because she continued to receive “G.A.” notwithstanding that she was not in “a behavior program.”

Respondent moved under Code of Civil Procedure¹ section 391 et seq. to declare Anderson a vexatious litigant and to require security. Anderson filed opposition papers. The trial court granted the motion, ruling that Anderson was a vexatious litigant within the meaning of section 391, and the county demonstrated there was no reasonable probability that she would prevail in the current action. The court further ordered Anderson to furnish security for the benefit of the county in the amount of \$15,000, by May 10, 2011.

The trial court dismissed the action with prejudice and entered judgment accordingly when appellant failed to furnish the required security. This appeal followed.

¹ All statutory references are to the Code of Civil Procedure.

II. DISCUSSION

Among other definitions, a “vexatious litigant” is a person who “[i]n the immediately preceding seven-year period has commenced, prosecuted, or maintained in propria persona at least five litigations other than in a small claims court that have been (i) finally determined adversely to the person” (§ 391, subd. (b)(1).) At any time prior to entry of final judgment, a defendant may move the court for an order requiring a plaintiff to furnish security on the ground that the plaintiff is a vexatious litigant and there is no reasonable probability that he or she will prevail in the current litigation. (§ 391.1.) Upon making the requisite findings, the court must order the plaintiff to give security for the benefit of the moving defendant. (§§ 391.2, 391.3.) Upon failure to post security as ordered, the litigation is dismissed. (§ 391.4.)

The trial court exercises its discretion in deciding whether a person is a vexatious litigant, and we uphold the court’s decision if supported by substantial evidence. (*Golin v. Allenby* (2010) 190 Cal.App.4th 616, 636.) Because the trial court is in the best position to receive evidence and conduct a hearing on the question of a party’s vexatiousness, we presume its order is correct and imply findings necessary to support the judgment. (*Ibid.*) Similarly, the lower court’s decision that the plaintiff does not have a reasonable chance of prevailing involves an evaluative judgment in which the court weighs the evidence. Again, we uphold that determination if supported by substantial evidence. (*Ibid.*)

Here, there is no dispute that Anderson, acting in propria persona, initiated at least five non-small claims court litigations which were finally determined adversely against her within a seven-year period. (§ 391, subd. (b)(1).) Thus, substantial evidence backs the trial court’s conclusion that Anderson is a vexatious litigant.

In one of her earlier lawsuits, also against respondent, Anderson asserted fraud and a host of other wrongs including discrimination, unfair business practices, infliction of emotional distress, “civil rights,” wrongful termination, fraud, and professional negligence in connection with her “general aide [*sic*].” In that case, her aid was allegedly terminated. Despite three opportunities to allege a cognizable and intelligible action

against respondent, Anderson was unable to do so. Further, Anderson failed to meet her burden of articulating how the complaint could be amended to change its legal effect.

In the current lawsuit, Anderson also alleged fraud, civil rights violations and infliction of emotional distress based on unintelligible assertions of wrongdoing in connection with her “G.A.” benefits, namely that she continues to receive benefits because she is in some type of “behavior[al] program.” The allegations are vague and conclusory, and the harm asserted and relief sought are not credible. Anderson alleges that defendant has “made me fearful, scar[ed],” and seeks “six Thousand twenty Billions” in compensatory damages. In her past action against respondent for unintelligible assertions of wrongdoing in connection with her benefits, Anderson failed to present a viable complaint despite three chances to do so. In her opposition to the present motion, Anderson again failed to proffer any facts which might arguably constitute a cognizable cause of action against respondent and thus counteract respondent’s argument that there was no reasonable likelihood she would prevail in the latest matter. Therefore, the court was well within its discretion to conclude Anderson could not overcome the profound deficiencies in her filing to produce a viable complaint this time.

In her opening brief, Anderson attacks the vexatious litigant statute as unconstitutional under the equal protection clause of the Fourteenth Amendment as well as the First Amendment, and asks for disqualification of the judge. Over the years state and federal courts consistently have upheld the constitutionality of the vexatious litigant statute. (*Wolfgram v. Wells Fargo Bank* (1997) 53 Cal.App.4th 43, 55-61; *In re Whitaker* (1992) 6 Cal.App.4th 54, 56; *Taliaferro v. Hoogs* (1965) 236 Cal.App.2d 521, 525-529; *Wolfe v. George* (N.D.Cal. 2005) 385 F.Supp.2d 1004, 1014-1016.) The *Wolfgram* court ably rejected First Amendment and due process challenges to the statute and the *Wolfe* court ably rejected substantive and procedural due process and equal protection challenges. Over 45 years ago, Division Two of this District explained at the outset of the *Tagliaferro* opinion that all presumptions and intendments favor the constitutionality of the statute, and went on to note that the state has plenary power to lay out the terms on

which it will permit litigation in our courts. Anderson's constitutional attacks have no merit.

Anderson did not seek disqualification below and has not presented any intelligible facts or argument to justify her request here.

III. DISPOSITION

We affirm the judgment of dismissal.

Reardon, Acting P.J.

We concur:

Rivera, J.

Sepulveda, J.*

* Retired Associate Justice of the Court of Appeal, First Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.